

BEFORE THE  
BOARD OF MEDICAL EXAMINERS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

REDACTED

In the Matter of the Accusation  
Against:

MASAYOSHI ITO, M.D.  
License No. A-08200

Respondent.

NO. D-1473

N-4111

DECISION

The above-entitled proceeding came on regularly for hearing before a quorum of District Review Committee III of the Board of Medical Examiners of the State of California, with Gilbert E. Elmore, a Hearing Officer of the Office of Administrative Hearings, presiding, on May 9, 1974, at Sacramento, California.

Robert L. Hultzen, Deputy Attorney General, appeared on behalf of the Board of Medical Examiners.

The respondent appeared personally and was represented by Nathaniel S. Colley, Attorney at Law.

Oral and documentary evidence was received, the hearing was closed and the matter was submitted. After due consideration the Committee issued its proposed decision on August 30, 1974. On February 4, 1975, the Board of Medical Examiners issued its Notice and Order of Non-Adoption. After due consideration the Board of Medical Examiners makes the following decision:

FINDINGS OF FACT

FIRST CAUSE OF ACCUSATION

I

Raymond Reid made the Amended Accusation herein in his official capacity as Executive Secretary of the Board of Medical Examiners, State of California.

II

On or about November 23, 1938, respondent Masayoshi Ito was issued, by the Board, License No. A-08200 to practice

medicine within the State of California. At all times mentioned herein, said license was in full force and effect.

### III

On or about December 5, 1972, respondent did prescribe for one Judy G [REDACTED], Seconal and Dexedrine. The evidence did not establish that said prescriptions were made without a prior examination of the patient.

### IV

On December 18, 1972, respondent did prescribe for one Tennise [REDACTED] A [REDACTED], Desoxyn HCl and Tuinal. The evidence did not establish that said prescriptions were made without a prior examination of the patient.

### V

On January 10, 1972, respondent did prescribe for one Tennise [REDACTED] A [REDACTED], Desoxyn HCl and Tuinal. The evidence did not establish that said prescriptions were made without a prior examination of the patient.

## SECOND CAUSE OF ACCUSATION

### I

Findings I and II of Count I are incorporated herein by reference as though herein set forth in full.

### II

On September 14, 1973, in a proceeding before the Superior Court of the State of California in and for the County of Sacramento, entitled People v. Ito, Action #42772, respondent was convicted after plea of nolo contendere of a violation of section 2399.5, Business and Professions Code (prescribing dangerous drugs without prior examination or medical indication); a statute of this State regulating dangerous drugs.

## THIRD CAUSE OF ACCUSATION

### I

Findings I and II of Count I are incorporated herein by reference as though herein set forth in full.

## II

On or about May 15, 1973, respondent did prescribe for one Joe [REDACTED] A [REDACTED] (Joe G [REDACTED]) a quantity of the narcotic drug Empirin Compound with Codeine, believing at that time that said Joe [REDACTED] A [REDACTED] was an addict or habitue.

## III

The act of respondent as set forth in Finding II did not constitute a violation of section 2391, Business and Professions Code as alleged in the Accusation in that the recipient of the prescription was not in fact a habitue or addict as required to constitute a violation of that section.

### DETERMINATION OF ISSUES

#### FIRST CAUSE OF ACCUSATION

No cause for discipline of respondent was established pursuant to section 2361, Business and Professions Code in conjunction with section 2399.5 of said Code.

#### SECOND CAUSE OF ACCUSATION

Cause for discipline of respondent exists pursuant to section 2361, Business and Professions Code in conjunction with sections 2361 and 2384 of said Code.

In determining the order of discipline hereafter proposed it has been considered that the crime for which respondent was convicted is a prohibition contained within the State Medical Practice Act directly relating to licensed activities of a physician.

#### THIRD CAUSE OF ACCUSATION

No cause for discipline was established pursuant to section 2361, Business and Professions Code in conjunction with section 2391 of said Code.

### ORDER

#### FIRST CAUSE OF ACCUSATION

The First Cause of Accusation is dismissed.

#### SECOND CAUSE OF ACCUSATION

The physician's and surgeon's certificate heretofore issued to respondent is hereby revoked, provided, however, that respondent may practice medicine after having first taken

and passed an oral examination administered by the Board, and provided further that upon the resumption of medical practice that respondent comply with the terms and conditions of probation as hereinafter imposed.

Respondent shall be on probation for a period of five (5) years with said five (5) year probationary period commencing at the time respondent has passed said oral examination. The terms and conditions of said probation are as follows:

1. Respondent shall comply with all laws of the United States and the State of California, and its political subdivisions and all rules and regulations of the Board of Medical Examiners of the State of California.

2. Respondent shall report in person to the Board of Medical Examiners at its regular annual meeting held in Sacramento, California, commencing in 1976 and for each year thereafter during said period of probation.

3. Respondent shall cause to be submitted to the Board of Medical Examiners at the close of each calendar quarter during his probation his affidavit to the effect that he has fully and faithfully complied with all of the terms and conditions of his probation as herein imposed.

4. Respondent shall fully and completely comply with the Probation Surveillance Program and cooperate with any agent of the Board operating thereunder.

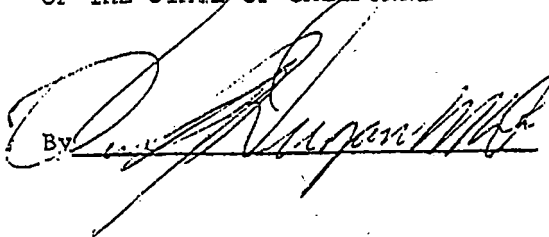
5. Respondent's privileges pursuant to Drug Enforcement Administration shall be restricted to prescribing only those drugs listed in Schedule 4 and Schedule 5 of sections 11057 and 11058, respectively, of the Health and Safety Code.

6. Should the Board of Medical Examiners determine, after notice to respondent and an opportunity to be heard, that respondent has, during the period of probation, violated any term or condition of the probation herein imposed, then and in that event, the Board of Medical Examiners may terminate the probation effective immediately or may make such other or further order as it then deems reasonable in the exercise of its discretion; that otherwise the stay shall become permanent and respondent's certificate restored to its full privileges.

SO ORDERED by the Board of Medical Examiners,  
August 22, 1975.

This decision shall become effective on the  
11th day of December, 1975.

BOARD OF MEDICAL EXAMINERS  
OF THE STATE OF CALIFORNIA

By 

BEFORE THE BOARD OF MEDICAL EXAMINERS  
OF THE STATE OF CALIFORNIA

REDACTED

In the Matter of the Accusation ) No. D-1473  
Against: ) N-4111  
MASAYOSHI ITO, M.D. )  
License No. A-08200 )  
Respondent )

NOTICE OF NON-ADOPTION OF PROPOSED DECISION  
(Pursuant to Section 11517 of the Government Code)

TO THE RESPONDENT ABOVE NAMED:

YOU ARE HEREBY NOTIFIED that the Board of Medical Examiners of the State of California has decided not to adopt the attached proposed decision, filed herein by the duly assigned District Review Committee, and dated August 30, 1974. You are also notified that the Board of Medical Examiners of the State of California will decide the case upon the record, including the transcript and without the taking of additional evidence. You are hereby afforded the opportunity to present written argument to the Board of Medical Examiners, if you so desire to do so, by filing such written argument with the Board at its office at 1020 N Street, Sacramento, California 95814, and the same opportunity is afforded the Attorney General of the State of California.

The opening brief of the Attorney General will be due 15 days from the receipt of this notice. The respondent will be allowed 15 days in which to reply, and the Attorney General allowed 5 days for a closing brief.

DATED: February 4, 1975

BOARD OF MEDICAL EXAMINERS  
OF THE STATE OF CALIFORNIA

  
RAYMOND REID  
Executive Secretary

BEFORE THE  
BOARD OF MEDICAL EXAMINERS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation )  
Against: )

MASAYOSHI ITO, M.D.  
License No. A-08200 )

NO. D-1473

N-4111

Respondent. )

PROPOSED DECISION

The above-entitled proceeding came on regularly for hearing before a quorum of District Review Committee III of the Board of Medical Examiners of the State of California, with Gilbert E. Elmore, a Hearing Officer of the Office of Administrative Hearings, presiding, on May 9, 1974, at Sacramento, California.

Robert L. Haluzen, Deputy Attorney General, appeared on behalf of the Board of Medical Examiners.

The respondent appeared personally and was represented by Nathaniel S. Colley, Attorney at Law.

Oral and documentary evidence was received, the hearing was closed and the matter was submitted. After due consideration the Committee proposes the following decision.

FINDINGS OF FACT

FIRST CAUSE OF ACCUSATION

I

Raymond Reid made the Amended Accusation herein in his official capacity as Executive Secretary of the Board of Medical Examiners, State of California.

II

On or about November 23, 1938, respondent Masayoshi Ito

was issued, by the Board, License No. A-08200 to practice medicine within the State of California. At all times mentioned herein, said license was in full force and effect.

### XIII

On or about December 5, 1972, respondent did prescribe for one Judy G. [REDACTED], Seconal and Dexedrine. The evidence did not establish that said prescriptions were made without a prior examination of the patient.

### IV

On December 18, 1972 respondent did prescribe for one Tennise [REDACTED] A [REDACTED], Desoxyn HCl and Tuinal. The evidence did not establish that said prescriptions were made without a prior examination of the patient.

### V

On January 10, 1972, respondent did prescribe for one Tennise [REDACTED] A [REDACTED], Desoxyn HCl and Tuinal. The evidence did not establish that said prescriptions were made without a prior examination of the patient.

## SECOND CAUSE OF ACCUSATION

### I

Findings I and II of Count I are incorporated herein by reference as though herein set forth in full.

### II

On September 14, 1973 in a proceeding before the Superior Court of the State of California in and for the County of Sacramento, entitled People v. Ito, Action #42772, respondent was convicted after plea of nolo contendere of a violation of section 2399.5, Business and Professions Code (prescribing dangerous drugs without prior examination or medical indication); a statute of this State regulating dangerous drugs.

## THIRD CAUSE OF ACCUSATION

### I

Findings I and II of Count I are incorporated herein



by reference as though herein set forth in full.

## II

On or about May 15, 1973, respondent did prescribe for one Joe [REDACTED] A [REDACTED] (Joe G [REDACTED]) a quantity of the narcotic drug Empirin Compound with Codeine, believing at that time that said Joe [REDACTED] A [REDACTED] was an addict or habitue.

## III

The act of respondent as set forth in Finding II did not constitute a violation of section 2391, Business and Professions Code as alleged in the Accusation in that the recipient of the prescription was not in fact a habitue or addict as required to constitute a violation of that section.

### DETERMINATION OF ISSUES

#### FIRST CAUSE OF ACCUSATION

No cause for discipline of respondent was established pursuant to section 2361, Business and Professions Code in conjunction with section 2399.5 of said Code.

#### SECOND CAUSE OF ACCUSATION

Cause for discipline of respondent exists pursuant to section 2361, Business and Professions Code in conjunction with sections 2361 and 2384 of said Code.

In determining the order of discipline hereafter proposed it has been considered that the crime for which respondent was convicted is a prohibition contained within the State Medical Practice Act directly relating to licensed activities of a physician.

#### THIRD CAUSE OF ACCUSATION

No cause for discipline was established pursuant to section 2361, Business and Professions Code in conjunction with section 2391 of said Code.

### ORDER

#### FIRST CAUSE OF ACCUSATION

The First Cause of Accusation is dismissed.

## SECOND CAUSE OF ACCUSATION

The certificate of Masayoshi Ito to act as a physician and surgeon in the State of California is hereby revoked, provided however, the execution of said order of revocation is hereby stayed for a period of 5 years from the effective date of this decision and respondent is placed upon probation on the following terms and conditions:

1. Respondent shall comply with all laws of the United States and the State of California, and its political subdivisions and all rules and regulations of the Board of Medical Examiners of the State of California.
2. Respondent shall report in person to the Board of Medical Examiners at its regular annual meeting held in Sacramento, California, commencing in 1975 and for each year thereafter during said period of probation.
3. Respondent shall forthwith surrender for cancellation his Drug Enforcement Administration Registration and shall not apply for a new registration without the prior written approval of the Board of Medical Examiners of the State of California.
4. Respondent shall cause to be submitted to the Board of Medical Examiners at the close of each calendar quarter during his probation his affidavit to the effect that he has fully and faithfully complied with all of the terms and conditions of his probation as herein imposed.

Should the Board of Medical Examiners determine, after notice to respondent and an opportunity to be heard, that respondent has, during the period of probation, violated any term or condition of the probation herein imposed, then and in that event, the Board of Medical Examiners may terminate the probation effective immediately or may make such other or further order as it then deems reasonable in the exercise of its discretion; that otherwise the stay shall become permanent and respondent's certificate restored to its full privileges.

### THIRD CAUSE OF ACCUSATION

The Third Cause of Accusation is dismissed.

I hereby submit the foregoing which constitutes the Proposed Decision of District Review Committee III of the Board of Medical Examiners in the above-entitled matter, as a result of the hearing had before said District Review Committee at Sacramento, California, on May 9, 1974, and recommend its adoption as the decision of the Board of Medical Examiners.

By William Nilssen, Jr. M.D.  
WILLIAM NILSSEN, JR., M.D.  
Chairman  
District Review Committee III

DATED: August 30, 1974

1 EVELLE J. YOUNGER, Attorney General  
2 of the State of California  
3 ROBERT L. HULTZEN,  
4 Deputy Attorney General  
5 555 Capitol Mall, Suite 550  
6 Sacramento, California 95814  
7 Telephone: (916) 445-1939

8 Attorneys for Complainant

REDACTED

9 BEFORE THE BOARD OF MEDICAL EXAMINERS  
10 DEPARTMENT OF CONSUMER AFFAIRS  
11 STATE OF CALIFORNIA

12 In the Matter of the  
13 Accusation Against:

No. D-1473

14 MASAYOSHI ITO, M.D.  
15 License No. A-08200

AMENDED ACCUSATION

16 Respondent.

17 COMES NOW THE COMPLAINANT, RAYMOND REID, and for cause  
18 for disciplinary action against the above-named respondent,  
19 charges and alleges as follows:

20 I

21 The complainant, Raymond Reid, is the Executive  
22 Secretary for the Board of Medical Examiners of the State of  
23 California (hereinafter "Board") and makes this accusation  
24 in such official capacity and not otherwise.

25 II

26 On or about November 23, 1938, respondent Masayoshi  
27 Ito was issued, by the Board, license No. A-08200 to practice  
28 medicine within the State of California. At all times  
29 mentioned herein said license was in full force and effect.

30 III

31 Section 2361 of the California Business and Pro-  
32 fessions Code (hereinafter "Code") provides, inter alia,  
that the Board shall take action against any holder of a  
certificate (medical license) who is guilty of unprofessional  
conduct which has been brought to its attention. Said section

1.

1 further provides that:

2 "Unprofessional conduct includes, but is  
3 not limited to, the following: (a) Violating,  
4 or attempting to violate, directly or indirectly,  
5 or assisting in or abetting the violation of, or  
6 conspiring to violate, any provision or term of  
7 this chapter."

8 IV

9 Section 2399.5 of the Code provides as follows:

10 "Prescribing dangerous drugs as defined in  
11 Section 4211, without either a prior examination  
12 of the patient or medical indication therefor,  
13 constitutes unprofessional conduct within the  
14 meaning of this chapter."

15 V

16 Section 4211 of the Code reads as follows:

17 "'Dangerous drug' means any drug unsafe for  
18 self-medication, except preparations of drugs  
19 defined in subdivisions (c), (f), and (i) hereof,  
20 designed for the purpose of feeding or treating  
21 animals (other than man) or poultry, and so labeled,  
22 and includes the following:

23 (a) Any hypnotic drug. 'Hypnotic drug' in-  
24 cludes acetyluric derivatives, barbituric acid  
25 derivatives, chloral, paraldehyde, sulfomethane  
26 derivatives, or any compounds or mixtures or pre-  
27 parations that may be used for producing hypnotic  
28 effects.

29 (b) Aminopyrine, or compounds or mixtures  
30 thereof.

31 (c) Amphetamine, desoxyephedrine, or compounds

1 or mixtures thereof except preparations for use  
2 in the nose and unfit for internal use.

3 (d) Cinchophen, neocinchophen, or compounds  
4 or mixtures thereof.

5 (e) Diethyl-stilbestrol, or compounds or  
6 mixtures thereof.

7 (f) Ergot, cotton root, or their contained  
8 or derived active compounds or mixtures thereof.

9 (g) Oils of croton, rue, savin or tansy or their  
10 contained or derived compounds or mixtures thereof.

11 (h) Sulfanilamide or substituted sulfanilamides,  
12 or compounds or mixtures thereof, except preparations  
13 for topical application only containing not more than  
14 five percent (5%) strength.

15 (i) Thyroid and its contained or derived active  
16 compounds or mixtures thereof.

17 (j) Phenylhydantoin derivatives.

18 (k) Any drug which bears the legend: "Caution:  
19 Federal law prohibits dispensing without prescription."

20 (l) Hypnotic drugs when combined and compounded  
21 with non-hypnotic drugs."

22 VI

23 Section 2391 of the Code provides, in pertinent part,  
24 as follows:

25 "Unless otherwise provided by this section,  
26 the prescribing, selling, furnishing, giving away  
27 or administering or offering to prescribe, sell,  
28 furnish, give away or administer any of the drugs  
29 or compounds mentioned in section 2390 to a habitue  
30 or addict constitutes unprofessional conduct within  
31 the meaning of this chapter."

VII

Section 2390 of the Code lists the following drugs and compounds:

" . . . [C]ocaine, opium, morphine, codeine, heroin, alpha eucaine, beta eucaine, chloral hydrate or any of the salts, derivatives or compounds, of the foregoing substances; . . . paraldehyde or barbituric acid, their salts, compounds or derivatives; . . . any narcotic or dangerous drug regulated by the statutes of this State, . . . " ( Emphasis added.)

VIII

Section 2372 of the Code provides as follows:

"The board shall discipline the holder of any certificate, whose default has been entered or who has been heard by the board and found guilty, by any of the following methods:

- (a) Suspending judgment.
- (b) Placing him upon probation.
- (c) Suspending his right to practice for a period not exceeding one year.
- (d) Revoking his certificate.
- (e) Taking such other action in relation to disciplining him as the board in its discretion may deem proper."

IX

COUNT I

On or about December 5, 1972, respondent did prescribe for one Judy ( ) (Judy C ) the following dangerous drugs in the indicated quantities without either a prior examination of said patient or having ascertained a medical reason therefor:

1                   Seconal - 100 mg. - 30 Tablets

2                   Dexedrine - 10 mg. - 30 Tablets

3                   COUNT II

4                   On or about December 18, 1972, respondent did pre-  
5 scribe for one Tennise A (Cathy H) the following  
6 dangerous drugs in the indicated quantities without either a  
7 prior examination of said patient or having ascertained a  
8 medical reason therefor:

9                   Desoxyn HCl - 15 mg. - 100 Tablets

10                  Tuinal - 100 mg. - 100 Tablets

11                  COUNT III

12                  On or about January 10, 1973, respondent did prescribe  
13 for one Tennise A (Cathy H) the following dangerous  
14 drugs in the indicated quantities without either a prior  
15 examination of said patient or having ascertained a medical  
16 reason therefor:

17                  Desoxyn HCl - 15 mg. - 50 Tablets

18                  Tuinal - 100 mg. - 50 Tablets

19                  X

20                  The drugs listed in paragraph IX are identified in  
21 section 4211 of the Code as follows:

22                  Seconal - paragraph (a)

23                  Dexedrine - paragraphs (c) and (k)

24                  Desoxyn HCl - paragraphs (c) and (k)

25                  Tuinal - paragraph (a)

26                  XI

27                  Respondent's conduct as set forth in paragraph IX  
28 represents multiple violations of section 2399.5 of the Code,  
29 thereby constituting, separately and severally, grounds for  
30 disciplinary action under the provisions of sections 2361 and  
31 2372 of the Code.



1                   FOR A SECOND, SEPARATE AND DISTINCT  
2                   CAUSE FOR DISCIPLINARY ACTION, COM-  
3                   PLAINANT CHARGES AND ALLEGES AS FOLLOWS:

4                   I

5                   Paragraphs I through VIII of the First Cause for  
6                   Disciplinary Action are hereby incorporated by reference and  
7                   made a part of this Second Cause for Disciplinary Action as  
8                   though fully set forth herein.

9                   II

10                  Section 2384 of the Code provides, in part, that  
11                  the conviction of a violation of the statutes of this State  
12                  regulating narcotics or dangerous drugs constitutes unpro-  
13                  fessional conduct within the meaning of the Medical Practice  
14                  Act. Section 2384 further provides that a conviction follow-  
15                  ing a plea of nolo contendere is deemed to be a conviction  
16                  within the meaning of this section.

17                  III

18                  On or about September 14, 1973, following his plea  
19                  of nolo contendere in Case No. 42772, respondent was convicted  
20                  by the Superior Court of the State of California for the County  
21                  of Sacramento of one count of a violation of section 2399.5  
22                  of the Code.

23                  IV

24                  Respondent's conviction, as set forth in paragraph  
25                  III, constitutes grounds for disciplinary action under the  
26                  provisions of sections 2361 and 2384 of the Code.

27                   FOR A THIRD, SEPARATE AND DISTINCT  
28                   CAUSE FOR DISCIPLINARY ACTION, COM-  
29                   PLAINANT CHARGES AND ALLEGES AS FOLLOWS:

30                   I

31                   Paragraphs I through VIII of the First Cause for  
Disciplinary Action are hereby incorporated by reference and  
made a part of this Third Cause for Disciplinary Action as

1 though fully set forth herein.

2 II


3 On or about May 15, 1973, respondent did prescribe  
4 for one Joe [REDACTED] (Joe G [REDACTED]) a quantity of the nar-  
5 cotic drug Empirin Compound with Codeine, knowing or believing  
6 at that time that said Joe [REDACTED] A [REDACTED] was an addict or habitue.

7 III

8 Respondent's conduct as set forth in paragraph II  
9 represents a violation of section 2391 of the Code, thereby  
10 constituting grounds for disciplinary action under the pro-  
11 visions of section 2361 of the Code.

12 WHEREFORE, complainant prays that a hearing be held  
13 and that, if all or any of the charges set forth herein are  
14 found to be true, the Board suspend or revoke the medical  
15 license heretofore issued to respondent or take such other  
16 action as the Board, in its discretion, may deem just and  
17 proper.

18 Dated: 4-15-74

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23 RAYMOND REID  
24 Executive Secretary  
25 Board of Medical Examiners  
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